The Law Commission

Consultation Paper No. 131
(Overview)

Assisting and Encouraging Crime

An Overview

HMSO

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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This overview, completed on 27 July 1993, is circulated for comment and criticism only. It does not represent the final views of the Law Commission.

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ISBN 0 11 730215 5

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AN OVERVIEW

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ASSISTING AND ENCOURAGING CRIME

AN OVERVIEW

INTRODUCTION

1. The Law Commission publishes simultaneously with this Overview a full Consultation Paper on Assisting and Encouraging Crime.[1] That Consultation Paper contains a full analysis of the present law, and invites comment on a range of options for its reform. We hope that all the material relevant to proper consideration of those options is either set out or referred to in the Consultation Paper.

2. The purpose of this Overview is two-fold. First, to provide a guide and summary for readers of the Consultation Paper: who may well find it helpful to read this Overview before embarking on the Consultation Paper itself. Second, however, the Overview is intended to serve as a much shorter account of the subject, and of the issues that it raises, than is to be found in the Consultation Paper. That inevitably means that, especially when describing the present rules of law, the Overview has to state matters somewhat dogmatically, and without setting out the full arguments contained in the Consultation Paper. It is hoped, however, that the Overview provides a sufficient account of the issues for non-lawyers and those who do not have the time or inclination to read the whole of the Consultation Paper. At each point, for those who wish to pursue a particular issue more fully, references are provided to the full Paper.

THE PROBLEM

2.1 Important issues of principle are involved in deciding the extent to which people should themselves be criminally liable because they have assisted or encouraged others to commit a crime.[2] On the one hand, considerations of law enforcement, and the desirability of promoting respect for the rules of the criminal law, suggest that assisters and encouragers are potentially dangerous, in that they support criminal behaviour. They are themselves proper objects of criminal sanctions both to reduce those dangerous effects and to mark society's disapproval of those who assist in breaches of its rules.[3] On the other hand, it may be argued that the law should be sparing in its intervention in the lives of people who have not themselves committed a substantive crime; that a law that punished every act of assistance or encouragement of a crime would be oppressive and impossible to enforce; and

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[1] Law Commission Consultation Paper No 131, *Assisting and Encouraging Crime* (1993): hereafter, LCCP 131.

[2] In this Overview we adopt the usual practice of referring to the person who commits the substantive offence as the "principal". In describing cases, the letter P will often be used to refer to the principal, and the letter D to the accessory.

[3] LCCP 131, paragraphs 4.18ff.

that therefore stringent limits should be placed on the criminalisation of, as opposed to the extension of moral disapproval towards, assisting and encouraging crime.[4]

2.2 No-one, we imagine, would think that it should *never* be an offence to assist or encourage another in committing crime. Rather, what is required are clear rules that identify the cases of assistance and encouragement that pose a real threat to the control and limitation of crime, and in respect of which the assisters and encouragers are clearly culpable. The issues discussed and the provisional proposals advanced in the Consultation Paper represent an attempt to work out those considerations in terms of practical rules of law.

THE PRESENT LAW

Sources

3.1 The present rules are almost entirely derived from the common law that is contained in decisions of the courts. As a result of that (i) the rules are nowhere set out in a clear and coherent manner; (ii) there are a number of contradictory, inconsistent and overlapping sources of the law; and (iii) the law has been formulated on an ad hoc basis, with no overriding consideration of the policy ends that it is seeking to serve.

3.2 The sources of the present law are

* The rules of *aiding and abetting* which, although they are matters of the common law, are expressed in section 8 of the Accessories and Abettors Act 1861 to relate to those who "aid abet counsel or procure" the commission of any crime.[5] This somewhat antique language can be broadly translated into a reference to those who assist, encourage or procure the commission of a crime.

* The common law crime of *incitement*, which deals with those who incite or encourage another to commit a crime.[6]

* The rules of *joint enterprise*, which provide that where P and D engage in a joint criminal enterprise (say, a burglary) D is liable for any further crime (say, murder) committed by P in the course of that enterprise, provided that D realised that there was a real risk of those crimes occurring, and whether or not D actually assisted in or encouraged their commission.[7]

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4 LCCP 131, paragraphs 4.29ff.

5 LCCP 131, paragraph 1.11.

6 LCCP 131, paragraph 1.12.

7 LCCP 131, paragraphs 2.108ff.

3.3 We deal later with the special cases of procurement,[8] and of joint enterprise. Those apart, the two broad forms of activity covered by the rest of the law are assisting crime and encouraging crime. Those activities are, however, in the present law, inconveniently distributed between aiding and abetting (which covers both assistance and encouragement) and incitement (which deals only with encouragement).

3.4 There is a further distinction, technical in origin, but important in practice. *Aiding and abetting* is, in the present law, not a separate offence, but merely a way in which the abettor is treated as a party to the principal crime.[9] It follows from that rule that if the principal crime does not take place (for instance, D drives P to the scene of an intended burglary, but P is arrested before he can enter the house) D will go free, because no principal crime has been committed. The same will be true if D acts as an encourager, but is charged with aiding and abetting on account of that encouragement: for instance, D urges P to burgle a house, without giving or offering any assistance, but P, for whatever reason, does not go ahead with the burglary. By contrast, *incitement* is a separate crime in itself, and therefore liability for it does not depend on the commission of the offence incited.[10] Therefore, in the example just given, if D were charged with incitement he would be guilty even if P did not commit the burglary as encouraged. The technical expression used to refer to the possibility of liability for incitement even though no principal offence has been committed is to say that incitement is an inchoate offence.

3.5 The rules of aiding and abetting on the one hand; and of incitement on the other; have therefore to be set out separately. At the same time, however, one has to remember that conduct that fulfils the "counselling" and perhaps also the "abetting"[11] element in aiding and abetting may also fall under the rules of incitement.

Aiding and abetting

3.6 The Court of Appeal held in *A-G's Reference (No 1 of 1975)*[12] that each of the words "aid, abet, counsel and procure" in section 8 of the Accessories and Abettors Act 1861 should be given a separate and distinct meaning. That, however, is very difficult to achieve.[13] We can only expound the law with any sort of simplicity if we reject that approach, and confine ourselves here to "assisting".

3.7 Any sort of assistance, however trivial, will fall under this branch of aiding and abetting. In addition, merely passive assistance will also be included, at least where the "assister" is in a position to exercise some sort of control over the principal, and fails to do

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8 LCCP 131, paragraphs 4.192ff.

9 LCCP 131, paragraph 1.11.

10 LCCP 131, paragraph 1.12.

11 LCCP 131, paragraphs 1.11-1.12.

12 [1975] QB 773.

13 LCCP 131, paragraph 4.11.

so: for instance, a publican who does not expel customers who are drinking after hours, or the owner of a car who sits in the passenger seat while another drives it recklessly.[14]

3.8 The assistance may be given whilst the principal is committing the crime, or in advance of its commission. Such an assister will be guilty of aiding and abetting if, when giving his assistance, he is aware that the principal is or may be acting, or that he may act in the future, with whatever fault is required for the commission of the offence.[15] It is not necessary that the accessory should intend or have as his *purpose* the commission of the principal offence: mere suspicion that a crime is being or will be committed with his assistance is enough.

3.9 This rule extends criminal liability to a wide range of activities. Examples are

* D, an estate agent, acts in the sale of a house to P, suspecting that P is going to use the house as an unlicensed nursing home.

* D, a taxi driver, drives P to The Laurels, suspecting that on arrival P is going to burgle the house.

* D, a shopkeeper, sells masking tape to P, suspecting that P wants it for use in a burglary; or sells petrol to P, when he knows that P is conducting a vendetta against X, and suspects that the petrol is going to be used for an arson attack on X's house.

* D, a generous host, plies P with drink far in excess of what will produce unlawful blood-alcohol levels, suspecting that he is going to drive home.

* D, a policeman acting as an undercover agent, drives P to meet P's confederates at the scene of a robbery, with a view to arresting them all red-handed in committing the robbery. The confederates evade D, commit the robbery, and escape.

* D, a doctor, provides contraceptive advice to X, a girl under sixteen, suspecting that P (an unidentified adult) may thereby be emboldened to have intercourse with her. P will in so doing commit the offence of having intercourse with an under-age girl.[16]

3.10 In order to limit the extent of this law a number of special defences have been provided, or suggested, to exculpate "abettors" in particularly sympathetic cases. The extent and terms, and even the existence, of these defences is very uncertain: readers are referred

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[14] LCCP 131, paragraphs 2.23-2.30.

[15] LCCP 131, paragraphs 2.53-2.54: see Draft Code, clause 27(1).

[16] LCCP 131, paragraphs 2.60ff, discussing *Gillick* v. *West Norfolk and Wisbech Health Authority* [1986] AC 112.

to the Consultation Paper for full details.[17] The defences that can be expressed with most certainty are

* Where a statute forbids P from committing an offence of which D is the victim, D cannot be convicted of aiding and abetting him: for instance, where P is accused of having intercourse with a girl [D] under the age of sixteen. The scope of the defence (sometimes called the "*Tyrrell*" rule) is, however, not clear. It may be more extensive than just stated, and apply to any case where D's participation is a necessary element in the commission of the offence; or it may be much more narrowly confined, to cases of sexual exploitation.[18]

* There may be a defence that protects persons who, although technically acting to assist the commission of an offence, do so only in order to mitigate the harmful consequences of the offence:[19] for instance, the doctor who provides contraception in order to prevent pregnancy resulting from the unlawful intercourse that he fears may take place in any event.

* Once D has done his act of assistance with the necessary awareness, he has done all that is necessary to expose him to criminal liability for aiding and abetting; but, under the rule explained above, he can only be convicted of aiding and abetting if the principal crime is in fact committed. If before that crime is committed D makes it unequivocally clear to P that he no longer supports the enterprise and (perhaps) takes such steps as he can to counteract his already given assistance, then D may be able to rely on a defence of "withdrawal".[20]

3.11 These defences have been developed to counteract what has been seen as the excessive width of the law of aiding and abetting. From another point of view, however, the law of aiding and abetting has been seen as too limited. That is because the requirement that the principal crime must be actually committed before the accused can be convicted has caused difficulty in a number of different ways.

3.12 First, D gives active assistance towards the commission of a crime, with the necessary culpable intention. However, he escapes punishment, or apprehension by the police, whatever the reason may be for the crime not being committed. Thus

* D manufactures and sells devices, the only use of which is to cause electricity meters to malfunction, and which he knows his purchasers will use to defraud the Electricity Company. The purchasers are arrested or change their minds before they make any false claims.

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[17] LCCP 131, paragraphs 2.80ff.

[18] LCCP 131, paragraphs 2.83ff.

[19] LCCP 131, paragraphs 2.92ff.

[20] LCCP 131, paragraphs 2.95ff.

* D provides equipment and advice to assist P to escape from prison. The plot is discovered before P actually carries through his attempt to escape.

3.13 Second, D may provide equipment believing that P intends to use it for criminal purpose X, whereas P in fact uses it for criminal purpose Y. Thus, D provides P with oxy-acetylene equipment thinking that he intends to use it to break into a bank at Stoke Newington. P in fact uses the equipment to break into a bank at Hackney, or to cut up property stolen by others from the bank at Stoke Newington.

3.14 Since D has to be charged as a party to the actual offence committed by P, in both the cases just mentioned in paragraph 3.13 he should escape accessory liability, because his guilty suspicion related to offence X, whereas the offence that was actually committed was offence Y. However, to counter what has been seen as the unjustified escape of criminally-minded assisters, the courts have developed a rule that in such cases, if D when providing assistance knows (and in this case does not merely suspect) that P intends a crime of the same type as offence Y that was actually committed, that is enough to convict D of assisting offence Y. What for the purpose of this rule counts as a crime of the same "type" as another is unclear.[21]

3.15 The problem where *no* principal crime has been committed cannot be solved within the boundaries of the present law of aiding and abetting. Cases such as those mentioned in paragraph 3.12 above have therefore had to be addressed by extending, in uncertain ways, other branches of the law. Conspiracy to commit a crime is already a notoriously uncertain offence, which there have been successive attempts to limit. However, in order to catch a person providing equipment for a prison escape, it has had to be accepted that, although he could not be convicted as an accessory, he could be convicted of conspiracy, even though he did not want the escape to take place and did not think that what he did would in fact assist that escape.[22] And other providers of equipment have been charged as inciters of the principal offence. A person can be guilty of incitement even if the principal offence is not committed;[23] but, as will be shown below, the use of incitement in cases that are truly ones of inchoate assistance has greatly widened the potential reach of the whole of the law of incitement.

Incitement[24]

4.1 D commits the crime of incitement when he encourages, requests or suggests that P should commit any crime. The incitement can be to an individual, or by advertisement to the whole world. It may be express or implied. Apart from that, however, the further limits of the offence are not at all certain.

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21 See *Bainbridge* [1960] 1 QB 129.

22 LCCP 131, paragraphs 3.24-3.25. *Anderson* [1986] AC 27.

23 See paragraph 3.4 above.

24 LCCP 131, paragraphs 2.126ff.

4.2 It has been suggested that, in order to distinguish incitement from the "counselling" that forms part of aiding and abetting, there must in incitement be an element of persuasion or pressure on the part of D. It is, however, very unclear whether that is the case. That lack of clarity is increased by uncertainty as to whether the inciter must have the commission of the principal crime as the purpose of his incitement. One would instinctively think that that must follow from the nature of "incitement" referred to in paragraph 4.1 above. However, in at least two cases[25] the commercial provision of equipment for the commission of crime has been held to amount to incitement, although there was no indication that the defendants were other than indifferent as to whether their customers would in fact commit the crimes envisaged. As suggested in paragraph 3.15 above, this development would appear to flow from a desire to convict at least some *assisters* although the crime towards which they gave assistance was not in fact committed.

4.3 From another point of view, however, the offence of incitement may be too narrow effectively to serve the purpose for which it is intended. It may well be the current law that the inciter must *know* of the existence of all the elements that would be required for conviction of the principal offence, including the culpable mental state of the principal. Belief, hope or indifference on D's part as to P's culpable mental state may not be enough. Thus, where D corruptly bought family allowance vouchers at an undervalue and sent P to cash them, D escaped liability for inciting P to commit an offence under the Family Allowances Act because it could not be shown that P was aware that she was not allowed to receive the money. It therefore could not be shown that D *knew* that P had the necessary mens rea for conviction of the principal offence,[26] as opposed to believing that she had, or being reckless as to whether she had it or not.

THE DEFECTS OF THE PRESENT LAW

5.1 Some of the difficulties of the present law inevitably appear from the foregoing account. A full survey of the problems that have been encountered by those using and commenting on this branch of English law is set out in Part III of the Consultation Paper, to which the reader may wish to make reference. What is said here is no more than a summary of the main points of difficulty.

Structure

5.2 Aiding and abetting and incitement overlap in a confusing and inconsistent fashion. Confusion as to which authorities courts should refer to in deciding cases is increased by the concurrent existence of the rules of joint enterprise.

Uncertainty

5.3 Although we have sought in this Overview to state the current law with as much certainty as possible, severe doubts remain at least as to

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[25] *Invicta Plastics* v. *Clare* [1976] RTR 251; *James & Ashford* (1985) 82 Cr App R 226.

[26] *Curr* [1968] 2 QB 944.

* The required extent of an abettor's knowledge of the principal crime[27]

* The authority of the precise terms used in the Accessories and Abettors Act 1861[28]

* The defences that are available to a charge of aiding and abetting[29]

* The proper description of the acts of someone charged with incitement[30]

* The extent of an inciter's required knowledge of the elements of the principal crime, and the extent to which he must desire or have as his purpose the commission of that crime[31]

* The extent to which the rules as to joint enterprise impose liability where D has neither assisted nor encouraged the crime committed by P[32]

5.4 In addition, although we are reasonably confident that the mental element in aiding and abetting is correctly stated, in paragraph 3.8 above, in terms of awareness or in effect suspicion that the principal crime is being or will be committed, that conclusion has been heavily challenged by commentators of authority, who contend that even under the present law D must have as his *purpose* the commission of the principal crime by P.[33]

5.5 It is very undesirable that there should be this high degree of uncertainty on these fundamental points. Citizens do not know what they can and cannot do. Prosecutors and police do not know what conduct they can legitimately control. And courts, if they are to attempt to do justice, are faced with the very difficult task of investigating uncertain and conflicting authorities. These problems are caused by the absence of a single structure for the law of assisting and encouraging crime, and by the fact that there has never previously been a critical survey of what that law is trying to do and how it should do it. In our view, the case for reviewing the law and for putting it on an agreed statutory basis is overwhelming simply on grounds of efficiency, and of the reduction of wholly unnecessary expense in the administration of justice. But, even more, many of the aspects of the present law are not only uncertain but also of very doubtful merit, as we show in the following sections.

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[27] LCCP 131, paragraphs 2.70ff.

[28] LCCP 131, paragraphs 2.8-2.22.

[29] LCCP 131, paragraphs 2.80ff.

[30] LCCP 131, paragraphs 2.127ff.

[31] LCCP 131, paragraphs 2.128ff.

[32] LCCP 131, paragraphs 2.108ff.

[33] LCCP 131, paragraphs 2.63ff.

The law extends too far?[34]

5.6 We have shown in paragraph 3.9 above that criminal liability may attach in aiding and abetting even to acts done in the ordinary course of business, or as part of purely social encounters; or even, as in the case of the doctor offering contraceptive advice to teenagers, to what might be thought to be public-spirited and responsible conduct. Those consequences largely result from the extension of liability to cases where D merely suspects that P is committing or will commit a crime.

5.7 In practice, many such cases may be excluded from liability for aiding and abetting because the principal crime is not, in the event, committed. That limitation, however, is erratic in its application, and may bear no relation to any fault or merit on the part of D. P having been assisted by D towards the commission of his crime may fail to commit that crime for all sorts of reasons: incompetence; remorse; intervention by the police; finding that the principal crime is impossible; or, possibly, dissuasion by D, or because D's assistance proves to be ineffective or his advice as to how to commit the crime incorrect. And, under recent decisions, even the failure of the principal crime to occur may not save D, because he may be inculpated in such cases as an inciter.[35]

The law does not extend far enough?[36]

5.8 It is perhaps a sign of the disorganised state of the law of aiding and abetting that the other main complaint about it is that in some respects it is not too wide but too narrow.

5.9 The rule that no liability attaches until the principal crime has been committed means that even though an assister knows and intends, and not merely suspects, that the principal whom he assists will commit a crime, he will escape if, for whatever reason, the principal crime does not occur. Thus, if D is conducting a business providing oxy-acetylene equipment to known burglars;[37] or electronic devices for evading speed traps to motorists;[38] or transport to a public meeting for a gang of hooligans that he knows are intent on a violent attack on those at the meeting;[39] the law of aiding and abetting cannot intervene to discourage his activities until the burglary, fraud or violence actually take place.

5.10 Understandable concern at the law appearing impotent in such circumstances has led to the development of the "*Bainbridge*" rule to cover cases where *some* crime, even if not the

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[34] LCCP 131, paragraphs 3.10ff.

[35] See eg, *Invicta Plastics* v. *Clare*, cited in n. 25, above.

[36] LCCP 131, paragraphs 3.17ff.

[37] *Bainbridge* [1960] 1 QB 129.

[38] *Invicta Plastics* v. *Clare*, see n. 25, above.

[39] *Beatty* v. *Gillbanks* (1882) 9 QBD 308.

crime foreseen by D, is committed by P;[40] and to extensions of the law of conspiracy and of incitement to cover some of the cases where no crime is committed at all.[41] These are, however, expedients, that introduce considerable uncertainty into the law of aiding and abetting; substantially extend the already very wide law of conspiracy; and also substantially extend the law of incitement. A more appropriate course is to look again at the law of aiding and abetting, to see whether a more rational law can be developed of culpable assistance, that targets cases where the legitimate complaint against the defendant is that he has indeed assisted a criminal purpose.

5.11 There is a further difficulty in the present law. In some cases D may encourage or incite P to do acts that are only not criminal because of some threat or deceit practised by D himself.[42] For instance, to quote two notorious cases, D coerces his wife into committing bestiality, she therefore not being guilty of the principal offence because she can rely on the defence of duress;[43] or D forces his wife to have intercourse with P, while deceiving P into thinking that Mrs D consents and thus exculpating P from the offence of rape.[44] Such conduct should clearly be controlled in some way, but that cannot be done by the present law of aiding and abetting because no principal crime will have been committed even if everything intended and arranged by D has been carried through. A special rule must therefore be devised for such cases.

A PRELIMINARY TO REFORM: THE FUTURE STRUCTURE OF THE LAW

6.1 In the rest of this Overview we set out, as we do in much more detail in Part IV of the Consultation Paper, our provisional proposals for the reform of the law. We are anxious to have the critical comments of readers on all these proposals.

6.2 It seems clear to us that this part of the law cannot be rationally reviewed unless the present artificial structure is removed so as to make clearly visible the substance of the law and the policy problems that it presents.

6.3 The remedy for the structure of the law is to abandon the present division between aiding and abetting and incitement, and to treat all the matters presently addressed by those two institutions by a single set of rules.[45] That enables us to recognise the reality that those rules have to cover two broad categories of activity: assisting crime; and encouraging crime.[46] We therefore propose, in place of the present law of aiding and abetting and of

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[40] LCCP 131, paragraphs 3.21-3.23, and paragraph 3.14 above.

[41] LCCP 131, paragraphs 3.24-3.28, and paragraph 3.15 above.

[42] LCCP 131, paragraphs 2.43-2.46.

[43] *Bourne* (1953) 36 Cr App R 125.

[44] *Cogan and Leak* [1976] QB 217.

[45] LCCP 131, paragraph 4.12.

[46] LCCP 131, paragraphs 4.13-4.17.

incitement, the creation of two new offences with the names "assisting crime" and "encouraging crime".

6.4 This arrangement of the subject has the further advantage that it recognises that most of the difficult policy issues referred to above arise in connection with assisting crime, rather than in connection with encouraging crime. We therefore first discuss the desirable limits of the new offence of assisting crime. Then, at somewhat shorter length, we address the new offence of encouraging crime.

ASSISTING CRIME

Introduction

7.1 Amongst the various issues considered below, two stand out as the most difficult. First, should assisting crime be an inchoate offence? That is, should it be possible to be convicted of that offence even if the principal crime assisted is not in fact committed?[47] Second, what should be the mental element required of an assister before he can be convicted of the offence of assisting crime?[48] Should it be (as now) merely suspicion that he is assisting the principal in what is or will be a crime? Or must he know, or at least believe, that a crime is being or will be committed with his assistance? Alternatively, should the law be even narrower than that, and require that the assister have as the actual *purpose* of his assistance that the crime should be committed?

7.2 Readers' answers to one of these questions may well be influenced by their answer to the other. Thus, for instance, some may find it easier to accept that assisting crime should be put on an inchoate basis if the required mental state for that offence is more limited than is the case under the present law. Readers may well, therefore, wish to suspend judgement on both points until they have considered all the issues raised in this Overview.[49] For ease of exposition, however, it is necessary to review the two questions separately, as part of our explanation of the proposed offence of assisting crime.

Should assisting crime be an inchoate offence?[50]

8.1 We have drawn attention[51] to the difficulties caused by the present rule that it is impossible to be convicted of aiding and abetting unless the principal offence is actually

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[47] LCCP 131, paragraphs 4.18ff.

[48] LCCP 131, paragraphs 4.76ff.

[49] And, for a full analysis of the arguments, have considered also the account set out in the Consultation Paper.

[50] See n. 47, above.

[51] See paragraphs 3.11-3.15 and 5.9-5.10 above.

committed. Several leading commentators[52] have therefore suggested that the solution to these problems is to put the offence of assisting on to an inchoate basis: that is, as an offence related to a specific substantive crime, which however can be committed even if that principal crime does not take place. This issue does not arise in the many cases where the assister is present and gives help during the actual commission of the crime: for instance, where D keeps watch while P enters and burgles the property, or D holds X while P hits him. It only affects those cases where D gives assistance towards a crime that P intends to commit in the future, but the crime does not in the event, and for whatever reason, take place. If assisting were to be criminal whether or not the principal crime occurred, it would in that respect resemble the other inchoate offences of incitement, attempt and conspiracy.

8.2 The attractions of that course are obvious enough. The desire to take steps against some assisters even when the principal crime does not take place has led to the *Bainbridge* rule[53] and to what have been seen as undesirable extensions of the law of conspiracy and of incitement.[54] That desire springs from a realisation that persons who take active steps to assist in the commission of crime are engaging in conduct that is anti-social because it is supportive of criminal activity. Their fault, and their culpable mental state, are, even under the present law, judged at the time that they give their assistance. The subsequent occurrence of the principal crime is merely at present a legal pre-condition to conviction for their actions, and on this view adds nothing to their actual fault.

8.3 The other side to this argument[55] is that the present offence of aiding and abetting already extends very widely, and would affect very many more instances of everyday behaviour if it were put on an inchoate basis. To take the examples given in paragraph 3.9 above, it would seem even odder for D to have committed an offence if P, to whom he sells the screwdriver or to whom he gives the lift in his taxi, does not in fact commit the foreseen crime. The legitimate interest of society that the criminal law should not intrude upon everyday activities unless some criminal act has been committed, and not merely been thought about, supports the retention of the commission of the principal crime as a limiting factor. Also, it may seem odd that in the cases mentioned, P, if he does not in the event commit the crime, will or may escape all liability, unless he has gone sufficiently far towards the commission of the crime to be liable for attempting it, whereas D, who has already performed his act of assistance, will be punishable for that.

8.4 In assessing these arguments, it should be remembered that we do not envisage the offence of assisting crime ranging as widely as the present aiding and abetting. The important limiting factor is the mental state to be required of the assister.[56] We suggest that

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[52] Professor JC Smith [1971] Crim LR at p.74; Professor Sir Rupert Cross in Cross & Jones, *Introduction to Criminal Law* (7th edition, 1972), at p.116; Professor AJ Ashworth, *Principles of Criminal Law* (1991), at pp. 383 and 417-418.

[53] See paragraphs 3.13-3.14 above.

[54] See paragraph 3.15 above.

[55] LCCP 131, paragraphs 4.29ff.

[56] LCCP 131, paragraphs 4.76ff.

there are two possibilities: either that there should be required knowledge or belief on the part of the assister that a crime is being or will be committed; or, more narrowly, that it should be his purpose that the crime is committed.[57] It may be thought that one or other of those requirements, rather than what may be the accident that the principal crime is not in fact committed, is a more rational limitation on criminal liability, and one that better identifies the dangerously anti-social assister. In addition, action in the sense of active assistance will be required of the accused. It will not therefore be the case that he has merely thought, and has done nothing. He has acted to assist a criminal enterprise. That commitment on his part may therefore be thought to justify the law's intervention, even where the principal, whether through incompetence, luck, repentance or the intervention of the law enforcement agencies, does not commit the offence assisted.

8.5 As we have said, these considerations must be weighed in the light of the intended elements of the offence of assisting, to which we now turn.

The act of assisting

9.1 We suggest that any act that can legitimately be described as "assistance" should suffice to fulfil the physical element of the offence of assisting crime.[58] That may be thought to extend the offence very widely. Some may wish to see the offence restricted to "substantial" or "material" assistance, or at least to see the exclusion from it of acts that only give trivial or de minimis assistance.[59] However, it would be difficult to find a satisfactory test for that exclusion. It may in any event be thought that provided the offender's state of mind fulfils the required intent or awareness of the criminality of the principal's conduct, *any* act that can legitimately be described as assisting the commission of that crime should fall within the proposed offence.

9.2 Such assistance should include the giving of advice as to how to commit a crime, and how to avoid detection or apprehension before or during its commission.[60] That conduct, just as much as physical or material assistance, is anti-social in the sense that it assists and supports criminal conduct.

9.3 Positive action should be required, rather than a mere failure to discharge a legal or moral duty to control another, or a failure to exercise authority to prevent criminal conduct.[61] It would in our view be too burdensome to place what would in effect be obligations of law enforcement on, for instance, the land-owner who has legal authority to order off his land trespassers who are using it to engage in illegal trading; or to make

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[57] See further paragraph 11.1 below.

[58] LCCP 131, paragraphs 4.47ff.

[59] LCCP 131, paragraphs 4.64-4.68.

[60] LCCP 131, paragraphs 4.52-4.56.

[61] LCCP 131, paragraphs 4.69-4.74. Cf the present law: see paragraph 3.7 above.

criminal, as an accessory to speeding, the car-owner who does not forcibly retake the wheel when the friend whom he has allowed to use his car starts to exceed the speed limit.[62]

The crime assisted[63]

10.1 The crime assisted is to be identified according to the assister's knowledge or belief in respect of the principal's proposed actions. It would make the law too vague if the assister could be liable just because he thought that the principal had *some* criminal object in view but he did not know what it was. By contrast, however, the assister may know what offence is intended, but may not know its details: for instance, D may know or believe that P is going to commit burglary with the equipment that he sells him, but may well not know where or when the burglary or burglaries are to take place.

10.2 We suggest, therefore, that D must know or believe in the existence of present or future facts that would make P's conduct a defined criminal offence, for instance "burglary", "unlawful wounding", or "unlawfully causing an explosion"; but he need not know the time, place or other details of that offence. Those facts include, except in the case of an offence of strict liability, the principal's mental state or mens rea necessary for guilt of the principal crime. Normally that will not cause difficulty: D will be inculpated according to his understanding of P's intentions. However, if D believes, however mistakenly, in the existence of facts that if true would render P's conduct non-criminal, he should not be guilty of assisting.[64]

The mental element[65]

11.1 We have already indicated that suspicion that a crime is being or may be committed should not be enough. In the Consultation Paper we suggest, without expressing any preference, two possible formulations of the mental element:

* that the assister knows or believes that the principal crime is being or will be committed; or

* that the assister's purpose is that the principal crime should be committed.

11.2 There are undoubted attractions in limiting the offence of assistance to cases where the assister has as his purpose that the principal crime should be committed, particularly if that offence is to be placed on an inchoate basis. A person who actively seeks the

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[62] See *Du Cros* v. *Lambourne* [1907] 1 KB 40.

[63] LCCP 131, paragraphs 4.57-4.63.

[64] For instance, P asks D to keep watch outside a house while P removes property. P falsely tells D, and D believes, that the property belongs to P. On that basis P's acts would not amount either to theft or to burglary, and D will not be guilty of assisting those offences even if P is in truth committing them because the property does not belong to him. For further examples, see LCCP 131, paragraph 4.60.

[65] LCCP 131, paragraphs 4.76ff.

commission of a crime, and gives assistance positively wanting the crime to happen, may be thought to be clearly anti-social, and undisputedly the proper object of criminal sanctions. Thus, on this view, there could be little objection to inculpating a shopkeeper who sold materials to a burglar; or a landlord who rented out property for use as an unlicensed slaughterhouse; or D who plied motorist P with drink; if in each case the assister not only believed that he was assisting the commission of the crime but had as his purpose in assisting that that crime should be committed. For the same reasons, there would be little justification for the somewhat elaborate special defences that are used in the present law,[66] if D could not be liable at all unless it could be shown that it was his purpose that the principal crime be committed. Thus, for instance, the doctor who gives contraceptive advice should evoke little sympathy if his purpose in so doing is to make easier the practice of illegal intercourse.

11.3 On the other hand, however, a law that limited itself to cases where the assister's purpose was that the principal crime should be committed would excuse any case where the assister, although he well knew that he was assisting in crime, was indifferent to whether that crime was carried through, or was participating merely for purposes of gain.[67] Thus, the shopkeeper who knows that his customers are using his goods for burglary, but merely wishes to obtain his profit; or the inventor who sells devices that can only be used to evade police speed-traps, but is only interested in getting his price, and does not care whether the devices are in fact used or not; or the look-out man at the burglary who is paid in advance, and does not therefore care whether the burglary succeeds or not; would all escape liability on this basis.

11.4 Those consequences would be avoided if the law required only knowledge or belief on the part of the assister that the crime was being or would be committed. That is a more limited test than that of suspicion, and thus is more restrictive than the present law. For instance, it would require in all of the cases mentioned in paragraph 3.9 above that D should believe, and not merely suspect, that P in performing the acts in which D assists him is or will be doing something that amounts to a crime.[68] The test will however include all those who act knowing that they are assisting in the commission of a crime, but who regard that fact with indifference.

11.5 The question on which we seek comment is whether even that test goes too far. On one view, it is a valuable and legitimate deterrent and impediment to the spread of crime to criminalise those who knowingly assist it. On an alternative view, it spreads the reach of the criminal law too far to bring within it those who have not committed a substantive crime themselves and who, while assisting those who do commit such crimes, have done so not to promote those crimes but for other motives.

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[66] See paragraph 3.10 above.

[67] LCCP 131, paragraph 4.80.

[68] D need not know that, as a matter of law, what P does is a crime: because here, as everywhere else in the criminal law, ignorance of the law should not be a defence. What is required is that D knows all the facts that have to be established before P can be guilty of whatever crime it is in which D assists him.

11.6 In any event, if knowledge or belief as to the principal's criminality is to be the test, it will be necessary to provide certain specific defences to the offence of assisting crime, to remove from it cases that, although falling within the terms of that broad definition, seem to be morally or socially desirable or, at least, acceptable. We deal with such possible defences, on the supposition that the relevant ingredient of the general offence will be one of knowledge or belief, and not purpose, in paragraphs 12.1ff below.

11.7 First, however, we can summarise the foregoing discussion, and provide what we hope is a useful outline guide for readers, by expressing in draft statutory form the terms of the offence of assisting crime that we have provisionally outlined above. The offence is expressed in terms of knowledge and belief in the criminality of the principal, rather than purpose that the principal crime should be committed; but that does not indicate any decision that we have reached, in advance of consultation, as to how that disputed question should be resolved.

"Assisting crime": our proposed offence

11.8 (1) A person commits the offence of assisting crime if he

(a) knows or believes that another ("the principal") is doing or causing to be done, or will do or cause to be done, acts that do or will involve the commission of an offence by the principal; and
(b) knows or believes that the principal, in so acting, does or will do so with the fault[69] required for the offence in question; and
(c) does any act[70] that he knows or believes assists or will assist the principal in committing that offence.

(2) Assistance includes giving the principal advice as to commit the offence, or as to how to avoid detection or apprehension before or during the commission of the offence.[71]

(3) A person does not assist the commission of an offence for the purposes of this section if all that he does is to fail to prevent or impede the commission of that offence.[72]

(4) "Offence" in sub-paragraphs (a)-(c) of sub-section (1) above means the breach of a specified prohibition laid down by statute or the common law; but,

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[69] This excludes cases in which the defendant believes in the existence of facts that would render the principal's conduct innocent. See LCCP 131, paragraph 4.60.

[70] This confirms the exclusion of any general *de minimis* principle: see LCCP 131, paragraphs 4.64-4.68.

[71] See LCCP 131, paragraphs 4.52-4.56. The element in the provision that relates to advice about evasion of detection is limited to advice as to such evasion before or during the commission of the principal offence. This is limited to advice about avoiding detection before or during the commission of the principal offence: see LCCP 131, paragraph 1.27.

[72] See LCCP 131, paragraphs 4.69-4.74, and paragraph 9.3 above.

provided the defendant knows or believes sufficient facts to show that such a breach is taking place or will take place, he need not know the time, place or other details of the offence.[73]

(5) A person also commits an offence under this section if he knows or believes that the principal intends to commit one of a number of offences and does any act that he knows or believes will assist the principal in committing whichever of those offences the principal in fact intends.[74]

Defences to an offence of assisting crime[75]

12.1 The normal, so-called "general", defences, which apply throughout the criminal law, will also apply to the offence of assisting crime. In the following paragraphs we consider what special defences, similar to those already available in aiding and abetting,[76] should apply to the new offence. The terms and limits of these defences are set out here in summary form. For more detail readers are referred to the Consultation Paper.

12.2 These defences will mainly be seen as appropriate and necessary in cases where the assister is merely aware that he is assisting in the commission of the principal crime, and does not have the commission of that crime as his purpose: see the discussion in paragraphs 11.1-11.2 above. Therefore: (i) if the mental element in the offence of assisting crime were to be purpose, most of these defences would not be required at all; and (ii) in any event they should not be available in any case where it is in fact the assister's purpose that the principal crime should be committed.[77]

12.3 Extending the "*Tyrrell*" rule,[78] we suggest a person should not be guilty of assisting the commission of an offence, if that offence is so defined that his conduct is inevitably incidental to its commission, yet is not itself expressly made the subject of criminal sanctions.[79]

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[73] See LCCP 131, paragraphs 4.58-4.59.

[74] This provision addresses the particular "shopping list" problem that is discussed in LCCP 131, paragraphs 4.87-4.88.

[75] LCCP 131, paragraphs 4.100ff.

[76] See paragraph 3.10 above.

[77] LCCP 131, paragraphs 4.138-4.140.

[78] LCCP 131, paragraph 4.101; and paragraph 3.10 above.

[79] LCCP 131, paragraphs 4.101-4.105. Eg, the purchaser in a licensee's sale of intoxicating liquor outside permitted hours would not be guilty of assisting the latter's offence under the Licensing Act 1964.

12.4 We also propose restrictions, whose operation would depend on the gravity of the offence assisted, on the liability of those who would otherwise incur liability for assistance because of acts done in the course of their employment.[80]

12.5 Under the present law, the status is unclear of defences based on the "assister's" aim to prevent the commission of a crime, or to reduce its detrimental effects.[81] We suggest that such a defence might be available to: first, a party who participates in, but does not instigate, the commission of an offence with the purpose of frustrating its commission;[82] and second, a party whose acts of assistance are performed with the purpose of limiting the harmful consequences of the offence assisted.[83] We invite comment on whether there ought to be a burden, evidential or persuasive, placed on a defendant who wishes to run either of these defences, given that, by their nature, they may well be based largely on matters known exclusively to him.

12.6 There should continue to be a defence of withdrawal.[84] Such a defence certainly exists in some form in the present law of aiding and abetting,[85] and under the new law it would apply equally to cases of assistance in a crime which is eventually committed as to cases of inchoate assistance. For a defendant to benefit from this defence, it would have to be shown that he took all reasonable steps to prevent the commission of the crime towards which he had rendered assistance.

ENCOURAGING CRIME[86]

13.1 The proposal of an inchoate offence of assistance is an innovation. Encouragement, however, has always been placed on an inchoate basis, in the offence of incitement. We proceed on the basis that our offence of encouraging crime will replace the offence of incitement, and will be complete on the commission of an act or acts of encouragement performed with the appropriate mental element, irrespective of whether the offence encouraged is committed.

The act of encouragement[87]

14.1 The offence of encouragement should cover both cases where the defendant's acts are designed to instigate the commission of the offence by the principal, and cases where those acts are simply designed to support or fortify him in a decision to commit the offence that he

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[80] LCCP 131, paragraphs 4.106-4.112.

[81] See paragraph 3.10 above.

[82] LCCP 131, paragraphs 4.123-4.128.

[83] LCCP 131, paragraphs 4.129-4.131.

[84] LCCP 131, paragraphs 4.132-4.137; and paragraph 3.10 above.

[85] LCCP 131, paragraphs 2.95ff.

[86] LCCP 131, paragraphs 4.143ff.

[87] LCCP 131, paragraphs 4.146ff.

has already made. Where his acts can truly be described as encouragement (for instance, as a spectator at an illegal fight or concert) it should not matter that the actual conduct is merely passive.[88] The need to demonstrate an intent to encourage avoids the objections that exist to liability for passive conduct in the case of *assistance*.[89]

The offence encouraged

14.2 The conduct encouraged must be a defined crime. There should remain a requirement, as in the present law of incitement, that the encourager be aware of the elements, physical and mental, that render the conduct of the principal criminal. As with assisting crime, however, it should not be necessary to descend into specificities of time, place or detailed circumstances.

The mental element[90]

14.3 The mental element for encouragement should be purpose that the offence encouraged be committed. That best conveys the connotations of the word "encourage", and also avoids what might appear to be extension of the law to cover behaviour which ought not to be classified as criminal. The implications for freedom of expression might seem particularly serious if, for example, a person who wrote an article criticising the use of animals in experiments could be guilty of encouraging crime if his piece inspired another person to cause criminal damage at a laboratory, when the commission of the damage was not the author's purpose.

"Encouraging crime" our proposed offence

15.1 We therefore propose the following formulation for the offence of encouraging crime:

(1) A person commits the offence of encouraging crime if he
   (a) solicits, commands or encourages another ("the principal") to do or cause to be done an act or acts which, if done, will involve the commission of an offence by the principal; and
   (b) intends that that act or those acts should be done by the principal; and
   (c) knows or believes that the principal, in so acting, will do so with the fault required for the offence in question.

(2) The solicitation, command or encouragement must be brought to the attention of the principal, but it is irrelevant to the person's guilt

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[88] LCCP 131, paragraphs 4.157-4.158.

[89] Compare paragraph 9.3 above.

[90] LCCP 131, paragraphs 4.153-4.156.

whether or not the principal reacts to or is influenced by the solicitation, command or encouragement.[91]

(3) The defendant need not know the identity of the principal, nor have any particular principal or group of principals in mind, provided that he intends his communication to be acted on by any person to whose attention it comes.[92]

(4) "Offence" in sub-paragraphs (a) and (c) of sub-section (1) above means the breach of a specified prohibition laid down by statute or the common law; but for the purposes of this section the defendant may solicit, command or encourage the commission of such an offence without intending that it should be committed at a specific time or place.

ISSUES COMMON TO BOTH ASSISTING AND ENCOURAGING CRIME[93]

Introduction

16.1 In this section we address various issues that will have to be resolved in any new law, and which apply equally to assisting and to encouraging crime. These issues vary considerably in their practical importance. A much fuller exposition is to be found in the Consultation Paper.

Complicity in summary offences[94]

16.2 We suggest that, as a matter of principle, once conduct has been deemed criminal, even only as a summary offence, that should be enough to justify the prosecution of those who assist or encourage that conduct. Moreover, from a pragmatic point of view, the criminalisation of assisting or encouraging a summary offence will provide a valuable weapon against those who mastermind large-scale schemes of minor offences.[95]

Impossibility[96]

16.3 The culpability of the assister or encourager is purely a function of his own behaviour. It ought not to depend on matters beyond his control, such as whether the principal actually

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[91] This provision meets the objection to the term "encouragement" that we encountered in connection with the Draft Code, as discussed in LCCP 131, paragraphs 4.160-4.161. It also confirms the requirement in the present law that an incitement, to be such in law, must be communicated to its intended object.

[92] This provision is intended, perhaps for the avoidance of doubt, to cover the case where the defendant issues a general incitement or encouragement to commit an offence, for instance through a newspaper article.

[93] LCCP 131, paragraphs 4.170ff.

[94] LCCP 131, paragraphs 4.171-4.173.

[95] *Curr* [1968] 2 QB 944.

[96] LCCP 131, paragraphs 4.174-4.179.

commits the offence encouraged. The same principle suggests that even where the offence believed to be assisted or encouraged proves to be impossible to perform, that should not affect the liability of a person who has otherwise fulfilled the requirements for assisting and encouraging crime.

Combinations of complicity and inchoate offences[97]

16.4 A person should not be criminally liable for assisting or encouraging the offences of attempt or conspiracy, nor indeed the offences of assisting and encouraging themselves, for the simple reason that the conduct of the perpetrator in such circumstances is too far removed from the commission of the ultimate principal offence to justify the imposition of criminal sanctions.

16.5 On the other hand, granted the existence of the offences of attempt and conspiracy, we provisionally conclude that there should be no special rule preventing the application of these offences to the offences of assisting or encouraging.

Punishment[98]

16.6 It will probably be true in practice that, while the penalty for assisting or encouraging an offence should be linked to the penalty for the offence assisted or encouraged, it will on the facts of any given case generally be lower than that for the principal offence. We consider, however, that as a matter of rule the *maximum* penalty for a crime of complicity should be the same as for the principal crime involved. It is easy to envisage cases where the assister or encourager is more culpable that the perpetrator of the principal offence. Differences in culpability between the accomplice and the principal can always be accommodated through the sentencing discretion of the court.

OTHER ISSUES ARISING FROM OUR REVIEW OF THE LAW OF COMPLICITY[99]

Introduction

17.1 This final section of the Overview mentions, briefly, some issues that do not directly concern the content of the new offences of assisting or of encouraging crime. Here again the issues differ considerably in importance. Fuller exposition of them can be found in the Consultation Paper.

Procurement[100]

17.2 The analysis we have undertaken in the Consultation Paper shows that it may be desirable for there to be a separate offence, namely "procuring", to cover the case where the principal offence is "caused" by the actions of the procurer, but the perpetrator of the

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[97] LCCP 131, paragraphs 4.180-4.187.

[98] LCCP 131, paragraphs 4.188-4.190.

[99] LCCP 131, paragraphs 4.191ff.

[100] LCCP 131, paragraphs 2.15-2.22 and 4.192-4.197.

principal offence is unaware that he is in fact committing an offence. Such conduct ought to be controlled by the criminal law, but is not most naturally described as either assisting or encouraging the commission of the principal crime.

17.3 "Procurement" will only arise rarely. The most obvious, and perhaps the only, case will be in crimes of strict liability: for instance, where D "laces" P's drink, causing him to commit the offence of driving with excess alcohol.[101]

Joint enterprise[102]

17.4 Pragmatic considerations, namely the desire to inculpate to as high a degree as possible those who willingly lend themselves to criminal enterprises, have led to the development of this doctrine. However, the operation of the doctrine is unsound in principle, since liability for a crime committed by P in the course of the "enterprise" may be visited on D even though D has neither assisted nor encouraged the commission of that crime. That is illustrated by cases of murder, where the perpetrator of the acts causing death must intend either death or serious bodily harm, whereas the co-enterpriser can be convicted of murder if he is shown merely to have foreseen a real possibility that the murder would be committed by the perpetrator.

17.5 We therefore invite comment on whether the doctrine ought to be abolished. It should be borne in mind that the companion will have already inculpated himself in the offence which is the subject of the enterprise. Abolition could either be complete, or so as to cause the doctrine to operate in a special manner where the offence committed in the course of the joint enterprise is murder.

The guilty accessory and the innocent principal[103]

17.6 The problem of how to treat the person who assists or encourages conduct that would be criminal but for a defence personal to the perpetrator of that conduct is essentially intractable. It is in general terms imperative to retain the requirement that the principal's conduct involve the commission by him of a criminal offence, with the required mens rea on his part. Secondary liability for assisting and encouraging what was merely the commission by the principal of the actus reus of a crime would extend criminal liability too far. However, in order to address the most blatant cases,[104] we propose that there be a specific offence of encouragement, which would apply where a defendant encourages acts which only fail to amount to a criminal offence because the principal can adduce a defence of duress based on threats made to him by the defendant, or because the principal is acting under a mistake of fact which was intentionally brought about by the defendant.

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[101] *Blakely v DPP* [1991] RTR 405.

[102] LCCP 131, paragraphs 4.198-4.201; and see paragraph 3.2 above.

[103] LCCP 131, paragraphs 2.39-2.46 and 4.202-4.210; and paragraph 5.11 above.

[104] Eg in particular, *Bourne* (1953) 36 Cr App R 125; *Cogan and Leak* [1976] QB 217.

Particular statutory offences[105]

17.7 The language employed in certain statutes will have to be amended to take account of the new offences of assisting and encouraging crime. For example, statutes which contain the terms "aid, abet, counsel or procure" would have to be amended to read "assist, encourage [or procure]".

ISSUES ON WHICH WE SEEK COMMENT

18.1 Part V of the Consultation Paper sets out a list of issues on which we particularly seek comment. For ease of reference, all but the most detailed of these issues are repeated below, with appropriate references to this Overview.

Basic structure of the law

1. Is it agreed that there should be separate consideration of encouraging the commission of crime on the one hand and assisting the commission of crime on the other? (paragraph 6.3)

2. Is it agreed that the offence of assisting should be put on to an inchoate basis, not requiring the commission of the principal crime before a conviction can be obtained (paragraphs 8.1-8.5)?

3. Comment is invited generally on our provisional definition of the new offence of assisting crime that is set out in paragraph 11.8, and on the elements of that offence that are explained in more detail in paragraphs 9.1-11.6.

4. An important preliminary question is whether the mental element of the offence should be stated in terms of purpose that the principal offence be committed or knowledge or belief that the offence is being or will be committed (paragraphs 11.1ff).

5. Further particular issues are:

   5.1 Whether the offence is satisfactorily formulated in terms of "assistance", without further extensive definition (paragraph 9.1)

   5.2 Whether the offence should be subject to a *de minimis* principle (paragraph 9.1)

   5.3 Whether it should be possible to commit the offence of assistance by an omission (paragraph 9.3)

6. Comment is invited on the desirability and scope of the defences to the offence of assisting crime that are discussed in paragraphs 12.1ff. Readers are particularly invited to consider the extent to which their view of the need for such defences is affected by their opinion on question 4 above.

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[105] LCCP 131, paragraphs 4.197 and 4.218-4.220.

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7. Comment is invited generally on our provisional definition of the new offence of encouraging crime, which is set out in paragraph 15.1, and the elements of which are explained in paragraphs 14.1-14.3.

8. Should there be limits on the principal offences in respect of which it will be possible to commit the offences of assisting or of encouraging crime? In particular, should the new offences extend to summary offences? (paragraph 16.2).

9. What should be the effect of the principal offence being impossible of commission? (paragraph 16.3)

10. Is it agreed that neither the offence of assisting crime nor the offence of encouraging crime should be able to be committed in respect of any inchoate or preliminary offence, such as attempt, conspiracy, or the new offences themselves? (paragraph 16.4)

11. Should it be possible to attempt or to conspire to commit the new crimes? (paragraph 16.5)

12. Should the maximum punishment for the new offences be the same as for the particular principal crime to which they relate in a given case, or should some other, and if so what, regime of punishment be adopted? (paragraph 16.6)

13. Should there be introduced a further offence of "procurement", in the terms suggested in paragraphs 17.2-17.3, or in any other terms?

14. Should the doctrine of joint enterprise be abolished? If it is thought that it should remain, in conjunction with the proposed new offences, to what cases should it be directed? (paragraphs 17.4-17.5)

15. Should a special offence be introduced to deal with the problem discussed under the heading of the guilty accessory and the innocent principal? If so, should that offence be in the terms suggested in paragraph 17.6, or in some other terms?

Printed in the United Kingdom for HMSO.
Dd.0294479, 9/93, C13, 3397/5, 5673, 258289.